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| APPLICATION NO.         | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.     | CONFIRMATION NO. |
|-------------------------|-------------|----------------------|-------------------------|------------------|
| 10/072,522              | 02/06/2002  | Stevan Charles Allen | SJO920010052US1         | 2897             |
| 29683                   | 7590        | 12/28/2004           | EXAMINER                |                  |
| HARRINGTON & SMITH, LLP |             |                      | MCLEAN MAYO, KIMBERLY N |                  |
| 4 RESEARCH DRIVE        |             |                      | ART UNIT                | PAPER NUMBER     |
| SHELTON, CT 06484-6212  |             |                      | 2187                    |                  |

DATE MAILED: 12/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/072,522

**Applicant(s)**

ALLEN ET AL.

**Examiner**

Kimberly N. McLean-Mayo

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 04 October 2004.  
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☒ Claim(s) 2,3 and 8-20 is/are allowed.  
6) ☒ Claim(s) 1 and 4-7 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.  
5) ☐ Notice of Informal Patent Application (PTO-152)  
6) ☐ Other: \_\_\_\_\_.

### DETAILED ACTION

1. The enclosed detailed action is in response to the Amendment submitted on October 4, 2004.

#### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1 and 4-7 are rejected under 35 U.S.C. 102(e) as being anticipated by Gamache et al. (USPN: 6,453,426).

Regarding claims 1, 4 and 6-7, Gamache discloses (a) identifying at least one second data set [core boot data] from which the first data set [configuration data] is to be separated (C 10, L 14-16); (b) identifying any of the plurality of storage resources and any volume thereof that contains the second data set (C 10, L 1-4); and (c) forming an eligible volume list [group node preference list, specifically the mirrored storage devices within the listed nodes] for selection of the first storage resource according to a policy [policy which dictates a node's preference] such that any storage volume identified by step (b) is excluded from the list [in each node, the core boot data is only stored within the quorum storage region [quorum storage devices] and thus the eligible list of mirrored storage devices indirectly listed via its corresponding node does not include the storage region which contains the core boot data], whereby a failure in a storage resource that

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contains the first storage volume or any storage resource identified by step (b) has a minimal impact on the other thereof (C 9, L 26-27, L 44-51).

Regarding claim 5, Gamache discloses (d) selecting the first storage volume from the eligible volume list (C 9, L 26-27).

***Allowable Subject Matter***

4. Claims 2-3 and 8-20 are allowed.

***Response to Arguments***

5. Applicant's arguments filed with respect to claims 1 and 4-7 have been fully considered but they are not persuasive.

Regarding Applicant's argument with respect to Gamache, the Examiner asserts the following; Gamache discloses a first data set as configuration data and a second data set as core boot data and that the configuration data is separated from the boot data. Hence, it is evident that the system comprises means to discern the first data set from the second data set to identify/determine which data is to be separated from the set.

Gamache clearly establishes/identifies what resource(s) of the plurality of resources [plurality of resources comprises Reference 57 and Reference 108 in Figures 4a-4c] contain(s) the second data set (Refer to C 10, L 1-4; specifically Gamache teaches that the second data set is stored in Reference 57 in Figures 4a-4c).

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Gamache disclose an ordered list of owners [wherein the Examiner is interpreting the eligible volume list to be the mirrored storage regions corresponding to the nodes which correspond to the owners] which selects the first storage resource (the first storage resource is selected when the node containing the resource is failed over to from another node; refer to C 9, L 25-27)

Since the list only contains the mirrored storage regions, none of theses resources contain the second data set because the second data set is stored in quorum storage and not in the mirrored storage devices and thus a failure of any storage resource containing the second data set will not impact the resources containing the first data set because the data sets are stored in different, independent resources.

### ***Conclusion***

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

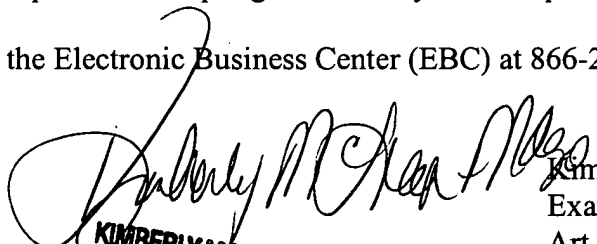
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however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kimberly N. McLean-Mayo whose telephone number is 703-308-9592. The examiner can normally be reached on M (10:00 - 6:30); Tues, Thr (10:00 - 4:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Donald Sparks can be reached on 703-308-1756. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
KIMBERLY MCLEAN-MAYO  
PRIMARY EXAMINER

Kimberly N. McLean-Mayo  
Examiner  
Art Unit 2187

KNM

December 24, 2004